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July 5, 1996

Mr. William F. Caton, Acting Secretary  
Federal Communications Commission  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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**Re: Automatic Vehicle Monitoring Systems, PR Docket No. 93-61**

Dear Mr. Caton:

Enclosed for filing with the Commission are the original and nine copies of Opposition of Symbol Technologies, Inc. To Petition for Partial Reconsideration of Pinpoint Communication Networks, Inc., in the above-referenced docket.

Kindly date-stamp and return the extra copy of this cover letter.

If there are any questions about this filing, please call me at the number above.

Respectfully submitted,

  
Mitchell Lazarus

cc: Mr. Raymond A. Martino, Symbol Technologies, Inc.  
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JUL 5 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington DC 20554

In the Matter of )  
 )  
Amendment of Part 90 of the ) PR Docket No. 93-61  
Commission's Rules to Adopt )  
Regulations for Automatic )  
Vehicle Monitoring Systems )

**OPPOSITION OF SYMBOL TECHNOLOGIES, INC.  
TO PETITION FOR PARTIAL RECONSIDERATION  
OF PINPOINT COMMUNICATION NETWORKS, INC.**

Symbol Technologies, Inc. ("Symbol") submits this Opposition to the Petition for Partial Reconsideration of Pinpoint Communication Networks, Inc. ("Pinpoint") (filed May 30, 1995) ("Pinpoint Petition"). Symbol is a major manufacturer of commercial Part 15 spread spectrum communications equipment, and is the leading manufacturer of portable bar code driven data transaction systems, with several million scanners and hand-held computers installed. Symbol designs, manufactures, and markets bar code laser scanners, portable computers, and spread spectrum data communications networks that are used as strategic building blocks in technology systems for retail, warehousing, distribution, manufacturing, package and parcel delivery, health care, and other industries. Symbol has actively participated at every stage of this proceeding.

Pinpoint's Petition restates its objections to Section 90.353(d) of the Rules, which requires testing of multilateration LMS equipment for compatibility with Part 15, and Section 90.363, which sets out limited conditions under which Part 15 operations are not considered to be causing harmful interference to multilateration LMS systems.<sup>1/</sup>

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<sup>1/</sup> 47 C.F.R. §§ 90.353(d), 90.361.

**I. THE COMMISSION SHOULD SUMMARILY DISMISS PINPOINT'S PLEADING AS REPETITIOUS.**

This is Pinpoint's third trip to the plate. The rules permit only two.

Pinpoint first addressed the same Part 15 issues it raises here early in this proceeding, when it made a lengthy and impassioned plea for denying Part 15 devices any protection from the LMS transmitters newly moving into the 902-928 MHz.<sup>2/</sup> The Commission disagreed, and in the Report and Order it laid out a reasoned and practical balance of interests between LMS and Part 15.<sup>3/</sup> Pinpoint filed and vigorously prosecuted a Petition for Reconsideration that contested the new rules on much the same grounds it had raised previously.<sup>4/</sup> In its Order on Reconsideration, the Commission again disagreed with Pinpoint and affirmed the rules, and explained why.<sup>5/</sup> Now Pinpoint has come forward yet again, still without new facts or arguments.

Having twice failed to persuade the Commission of its views -- first in the initial Report and Order, and again in the Reconsideration Order -- Pinpoint has exhausted its right

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<sup>2/</sup> Reply Comments of Pinpoint Communications, Inc. on Comments on Ex Parte Presentations at 19-36 (filed March 29, 1994). See Automatic Vehicle Monitoring Systems, 8 FCC Rcd 2502, 2506-07 (1993) (Notice of Proposed Rule Making); Erratum, 8 FCC Rcd 3233 (1993).

<sup>3/</sup> Automatic Vehicle Monitoring Systems, 10 FCC Rcd 4695, 4710-4718 (1995) (Report and Order), promulgating 47 C.F.R. §§ 90.353(d), 90.361.

<sup>4/</sup> Petition for Reconsideration of Pinpoint Communications, Inc. at 20-24 (filed April 24, 1995); Opposition of Pinpoint Communications, Inc. to Petitions for Reconsideration at 2-3, 5-20 (filed May 24, 1995); Reply of Pinpoint Communications, Inc. at 3-8 (filed June 7, 1995).

<sup>5/</sup> Automatic Vehicle Monitoring Systems, PR Docket No. 93-61, Order on Reconsideration, FCC 96-115 at ¶¶ 12-20 (released March 21, 1996) ("Reconsideration Order").

to be heard.<sup>6/</sup> It is not entitled to another chance. Section 1.429(i) of the Commission's Rules provides, in pertinent part,

Any order disposing of a petition for reconsideration which modifies rules adopted by the original order is, to the extent of such modification, subject to reconsideration in the same manner as the original order. Except in such circumstances, **a second petition for reconsideration may be dismissed by the staff as repetitious.**<sup>7/</sup>

The Commission has invoked this rule almost without exception against petitioners that seek further reconsideration of an unmodified rule.<sup>8/</sup> Pinpoint's Petition falls squarely within the rule, and both Commission precedent and common sense require its dismissal as repetitious. As the U.S. Supreme Court observed long ago,

[C]onstant re-examination and endless vacillation may become ludicrous, self-defeating, and even oppressive. Whether for better or for worse so far as the merits of the chosen course are concerned, **a point**

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<sup>6/</sup> In addition to the major pleadings cited above, Pinpoint has reported 88 ex parte contacts in this docket, all but six after it first raised Part 15 issues.

<sup>7/</sup> 47 C.F.R. § 1.429(i) (emphasis added). The only arguably pertinent modification to the rules on reconsideration is one Pinpoint does not challenge: a clarification that the testing requirement applies to grandfathered LMS systems unbuilt at the time of the Report and Order. Reconsideration Order at ¶ 7.

<sup>8/</sup> Joint Use Calling Cards, 2 C.R. 331, 336 (1996); Open Network Architecture, 10 FCC Rcd 1570, 1572 (1994); Specialized Mobile Radio Service, 8 FCC Rcd 7619, 7619 (1993); Short-Spaced FM Station Assignments, 7 FCC Rcd 2954, 2954 (1992); Perry, Florida, 7 FCC Rcd 2557, 2558 (1992); Special Access Tariffs, 6 FCC Rcd 76, 76 (1991); Satellite and Terrestrial Microwave Feeds, 4 FCC Rcd 6459, 6465 n.7 (1989); MTS and WATS Market Structure, 2 FCC Rcd 6642, 6643 (1987); AT&T's Earnings on Interstate and Foreign Services, CC Docket No. 79-187, Memorandum Opinion and Order and Request for Comments, FCC 85-573 at ¶ 4 (released Oct. 24, 1985). But cf. National Exchange, Inc., 1 FCC Rcd 682, 683 (1986) (allowing (but denying) further reconsideration because doing so will not delay proceeding).

may be reached at which the die needs to be cast with some "finality."<sup>9/</sup>

## II. PINPOINT'S OBJECTIONS REST ON A MISREADING OF THE RULES.

Pinpoint complains,

[T]he Commission on reconsideration effectively eliminated Part 15 operators' secondary status in the [902-928 MHz] band. Specifically, the Commission set out a new standard for protecting Part 15 devices, which is more protective than any secondary or primary service enjoys[.]<sup>10/</sup>

This assertion is wrong in several ways. First, the Commission took no action on these issues on reconsideration; the rules in question were promulgated in the original Report and Order and have not been amended since. Second, as the Commission has twice taken pains to explain, neither the testing requirement nor the limitations on "harmful interference" has eliminated Part 15 operators' secondary status. "[W]e affirmed that unlicensed Part 15 devices in the 902-928 MHz band are secondary and, as in other bands, may not cause harmful interference to and must accept interference from all other operations in the band."<sup>11/</sup> Third, what Pinpoint calls the "new standard for protecting Part 15 devices" in the Reconsideration Order is not new. The passage that Pinpoint refers to merely explains, but does not change, the standard previously established in the Report and Order.

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<sup>9/</sup> Civil Aeronautics Board v. Delta Air Lines, Inc., 367 U.S. 316, 325 n.5 (1961) (emphasis added) (quoting Tobias Weiss, Administrative Reconsideration: Some Recent Developments in New York, 28 N.Y.U.L. Rev. 1262, 1262 (1953)).

<sup>10/</sup> Pinpoint Petition at 2

<sup>11/</sup> Reconsideration Order at ¶ 18 (citation footnote omitted). See id. at ¶ 17-18; Report and Order, 10 FCC Rcd at 4714-15 (similar).

**A. Pinpoint Has Confused the Rules Relating To LMS Testing and Operation.**

Pinpoint fundamentally misunderstands how the LMS/Part 15 rules work. **The rules give a Part 15 device no protection whatsoever against any non-multilateration LMS transmitter, or against a multilateration LMS transmitter that has been tested under Section 90.353(b).** That test is a precondition to licensing a multilateration system. Once the test is complete and the license is issued, a Part 15 operator has no right to complain of interference; and it never has the right to complain of interference from a non-multilateration system. Pinpoint's dramatic statements to the contrary -- "If LMS must provide the level of protection required in the Reconsideration Order, then LMS will never be able to withstand the complaints of 'millions of part 15 devices in operation throughout the United States today . . . .'"<sup>12/</sup> -- are simply wrong.

Similarly, Pinpoint quotes from language on the LMS testing provision: "Further, the Commission seeks to ensure . . . that LMS systems are not operated in such a manner as to degrade, obstruct or interrupt Part 15 devices to such an extent that Part 15 operations will be negatively affected."<sup>13/</sup> Pinpoint then complains,

A Part 15 operator can now claim substantial interference any time its operation is "negatively affected" by LMS operations. Similarly, any time a Part 15 operation is "degraded" (e.g., subject to some additional noise from spread spectrum LMS operations, as might be typical in wireless audio sound systems), or "interrupted," even if only once, then LMS operations are threatened.<sup>14/</sup>

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<sup>12/</sup> Pinpoint Petition at 4-5.

<sup>13/</sup> Reconsideration Order at ¶ 15, quoted in Pinpoint Petition at 3-4.

<sup>14/</sup> Pinpoint Petition at 4.

Pinpoint still has it wrong. The terms "degrade, obstruct or interrupt" and "negatively affected" construe Section 90.353(d), on the **testing** of multilateration LMS equipment.<sup>15/</sup> The Commission uses these terms to explain the rule language "unacceptable levels of interference" -- in part at Pinpoint's own request.<sup>16/</sup> This language does not govern the **operation** of LMS. Pinpoint's concern that an LMS service is threatened if it causes interference to an operating Part 15 device has no basis, because the Part 15 user has no recourse against the LMS provider.

The only rule that affects the joint operations of LMS and Part 15 is Section 90.361, which effectively prevents a multilateration LMS system from shutting down a Part 15 device that operates within the narrow technical confines of the "safe harbor."<sup>17/</sup> Pinpoint objects to this rule but, significantly, omits any showing that LMS cannot operate effectively and profitably under the rule. To the contrary, Pinpoint's earlier filings boasted that its system is "sufficiently robust to share spectrum with" Part 15,<sup>18/</sup> and that wide-area LMS systems "can -- and should -- be designed to tolerate a reasonable amount of interference from Part 15

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<sup>15/</sup> Reconsideration Order at ¶ 15.

<sup>16/</sup> In seeking reconsideration the first time, Pinpoint protested, "The term 'unacceptable interference' is totally vague. Unacceptable to whom?" Petition for Reconsideration of Pinpoint Communications, Inc. at 22 (filed April 24, 1995).

<sup>17/</sup> If a Part 15 device meets stated criteria relating to antenna height (if outdoors) and certain other factors, it is not considered to be a source of harmful interference to a multilateration LMS system. 47 C.F.R. § 90.361.

<sup>18/</sup> Comments of Pinpoint Communications, Inc. at 4 (filed June 29, 1993).

secondary uses."<sup>19/</sup> Even so, Pinpoint would doubtless prefer to have unconditional precedence over other users, but today's crowded spectrum allows few that privilege. Part 15 users routinely resolve spectrum conflicts among themselves without Commission intervention; and Symbol is confident that Part 15 users and LMS providers working together in good faith can do the same.<sup>20/</sup> Certainly Pinpoint has not shown otherwise.

**B. The Standards in the Rules Are Clear and Workable.**

Having misread the rules, Pinpoint finds them confusing. First, it compares passages in the Report and Order ("Part 15 devices 'must accept interference' from LMS operations")<sup>21/</sup> and in the Reconsideration Order ("requires LMS operators not to 'degrade, obstruct, . . . . interrupt' or 'negatively affect' Part 15 operations").<sup>22/</sup> Then, it concludes: "These two inconsistent standards will create years of litigation before the Commission. The Commission's pronouncements leave the LMS industry vastly confused over the standards to which it will be held."<sup>23/</sup>

Properly read, however, these standards are entirely consistent, for they apply to wholly different situations. The first describes the obligations of a Part 15 device operating

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<sup>19/</sup> Reply Comments of Pinpoint Communications, Inc. at 4 (filed July 29, 1993). See also Reply Comments of Pinpoint Communications, Inc. on Comments on Ex Parte Presentations at 21 (filed March 29, 1994) (Part 15 devices will present a tolerable and manageable level of interference for the foreseeable future under Pinpoint's proposed technical rules).

<sup>20/</sup> The Commission is similarly optimistic. See Report and Order, 10 FCC Rcd at 4717.

<sup>21/</sup> Pinpoint Petition at 3, quoting Report and Order, 10 FCC Rcd at 4737.

<sup>22/</sup> Pinpoint Petition at 3, quoting Reconsideration Order at ¶ 15.

<sup>23/</sup> Pinpoint Petition at 3.



outside the safe harbor of Section 90.361.<sup>24/</sup> The second describes the standards applicable to the testing (not operation) of a multilateration LMS transmitter under Section 90.353(d). There is no confusion here, and certainly no basis for "years of litigation."

Pinpoint also seeks "precise guidance on whether Part 15 devices must accept interference from LMS operations as required by Sections 15.1(b) and 15.3(m) of the Rules."<sup>25/</sup> Section 90.361 provides that guidance. So do both the Report and Order and the Reconsideration Order.<sup>26/</sup> The rule says (1) Part 15 may not cause harmful interference to LMS, and (2) a Part 15 device operating in the safe harbor will not be considered to be causing harmful interference to a multilateration LMS system. There is no lack of clarity here.

### **III. THE COMMISSION HAS SUCCESSFULLY BALANCED THE PUBLIC INTEREST IN LMS AND PART 15.**

Pinpoint miscomprehends not only the outcome this proceeding but also its goals. The Commission's mandate is to issue an LMS license only "if the Commission . . . shall find that the public interest, convenience, and necessity would be served by the granting thereof."<sup>27/</sup> When LMS was initially proposed for 902-928 MHz in 1993,<sup>28/</sup> the band was already

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<sup>24/</sup> More precisely, it governs the obligations of a Part 15 device operating outside Section 90.361 as to a multilateration system, or of any Part 15 device as to a non-multilateration system.

<sup>25/</sup> Pinpoint Petition at 4.

<sup>26/</sup> Report and Order, 10 FCC Rcd at 4714-18; Reconsideration Order at ¶¶ 18-20.

<sup>27/</sup> 47 U.S.C. § 309(a).

<sup>28/</sup> Automatic Vehicle Monitoring Systems, 8 FCC Rcd 2502 (1993) (Notice of Proposed Rule Making).

occupied by more than 4 million Part 15 devices at an investment of over \$300 million;<sup>29/</sup> both numbers have risen sharply in the years since. The Commission expressly recognized the "important contribution" of Part 15 operations:

For example, Part 15 devices currently operating in the 902-928 MHz band provide valuable services such as automated meter reading, inventory control, package tracking and shipping control, alarm services, local area networks, and cordless telephones. These devices allow businesses to operate more effectively and efficiently, without the regulatory complexities of many licensed services.<sup>30/</sup>

Of course Pinpoint would prefer rules that permit it to cut off any Part 15 device that interferes with LMS, and would like to engineer its transmitters without regard to interference they may cause to Part 15. But the Commission reasonably decided that an assessment of the public interest should take into account the value that Part 15 products and services provide. And the Commission achieved a successful balance: It managed to introduce LMS into the already crowded band with only minimal disruption to the incumbents, and with only minimal constraints on LMS. That feat necessarily entailed some compromise; the initial Report and Order was not precisely what either side would have wished. To be sure, that is why both sides sought reconsideration. Apart from some minor adjustments, however, the Commission determined to let the initial compromise stand. All of the parties should now do likewise.

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<sup>29/</sup> Report and Order, 10 FCC Rcd at 4712 (number of devices); Comments of Symbol Technologies Inc. at 4 (filed June 29, 1993) (investment).

<sup>30/</sup> Report and Order, 10 FCC Rcd at 4714. See also Reconsideration Order at ¶ 4 ("Part 15 devices will play an important role in providing many valuable services to the public in the future.")

## CONCLUSION


Pinpoint's Petition seeks further reconsideration of rules that have been affirmed on reconsideration, and so must be dismissed as repetitious.

Even if the Petition is considered, it must be denied as groundless. Pinpoint's fears that Part 15 will complain of passing interference from LMS reflect a misunderstanding of the rules; and Pinpoint's complaints that inconsistencies in the rules will spawn years of litigation make no sense when the rules are properly read.

In assessing the competing values at stake in this proceeding, the Commission has found a fair and workable balance -- not necessarily one to Pinpoint's liking, but a result well grounded in the public interest. The Commission should affirm the present rules.

Respectfully submitted,

  
Gerald P. McCartin

  
Mitchell Lazarus

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July 5, 1996

**CERTIFICATE OF SERVICE**

I, Mitchell Lazarus, do hereby certify that on this 5th day of July, 1996, I have caused copies of the foregoing Opposition of Symbol Technologies, Inc. to Petitions for Reconsideration of Pinpoint Communication Networks, Inc. to be served by first-class mail, postage prepaid, upon the following, except that names marked with an asterisk were served by hand:

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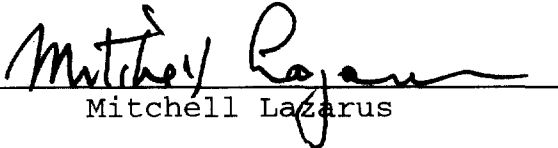
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